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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1952. No.

WASHINGTON LUMBER & MILLWORK CO.,
Petitioner,

VS.

DANT & RUSSELL SALES CO.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Washington Lumber & Millwork Co., Petitioner, prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Pennsylvania entered in the above entitled case on May 26, 1952.

OPINION BELOW.

The opinion of the Supreme Court of Pennsylvania is reported at 370 Pa. 627.

JURISDICTIONAL STATEMENT.

The judgment of the Supreme Court of Pennsylvania was entered on May 26, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

Petitioner seeks review of the judgment of the Supreme Court of Pennsylvania, the highest appellate court of the Commonwealth of Pennsylvania.

QUESTIONS PRESENTED.

1. In a case in which a buyer relies upon inventory regulations promulgated by the National Production Authority under Public Law 774—81st Congress, Chapter 932—2d Session, H. R. 9176, and cited as the Defense Production Act of 1950, which regulations prohibit delivery and acceptance of certain prescribed materials if that would cause the buyer's inventory to exceed certain limits, may such buyer be properly held liable for damages for alleged breach of a contract entered into before such regulations were established for refusal to accept delivery of such prescribed and

prohibited material tendered after the effective date of the said regulations.

2. Is there a duty on a defendant buyer attempting to act in accordance with the provisions and requirements of the Defense Production Act of 1950 to reduce inventory or to defer acceptance of delivery of material prescribed under the inventory regulations promulgated pursuant to the said Act.

STATUTE INVOLVED.

The Petitioner in this case invokes the protection of the Defense Production Act of 1950, and inventory regulations promulgated thereunder. The pertinent statutory provisions are printed in Appendix "A" infra pages.

STATEMENT.

This is an action in Assumpsit. The Complaint filed by the Plaintiff (here the Respondent) set forth a claim for damages based upon an alleged contract for the sale of lumber. The Defendant (here the Petitioner) ordered a certain quantity of lumber, hereinafter more fully described, and subsequently cancelled the order. The Plaintiff resold the lumber and brought suit for the difference in price between the contract price and the resale price.

The Defendant based its right to cancel the contract to purchase on the Inventory Control Rules and Regulations

promulgated under the Defense Production Act of 1950, alleging that it was required by the regulations to cancel said contract because its inventory would become excessive under the law which would subject it to criminal and civil prosecution by the Federal Government.

On or about September 1, 1950, Plaintiff, an Oregon Corporation engaged in the selling of lumber at wholesale, loaded and shipped to itself a cargo of lumber, part of which is the subject of this action, aboard the S. S. Cygnet from the Pacific Coast to Philadelphia, Pennsylvania (112a). While this lumber was in transit, to wit: on or about September 14, 1950, Plaintiff and Defendant entered into a contract wherein and whereby said Defendant purchased from Plaintiff approximately 180,000 feet of lumber F. O. B. Philadelphia, which lumber was on board the said ship in transit (127a). The original order acceptance read F. O. B. Dock, but since the lumber in question was on the high seas for a period of approximately two weeks at the time the order was placed by the Defendant, the word "Dock" could only mean dock of delivery, and in the instant case delivery was made at Philadelphia, Pennsylvania. The lumber arrived in Philadelphia October 10, 1950 (31a). On or about October 16, 1950, the Defendant cancelled its order for the lumber due to the fact that its acceptance would have been a direct violation of regulations issued by the National Production Authority on September 18, 1950, hereinafter more fully discussed (107a).

Almost three months later, the Plaintiff claims to have resold the lumber in question at a price substantially lower than the sales price charged by the Plaintiff to the Defendant. Approximately 24,000 feet of the order of lumber in question was sold on or about January 4, 1950 at $69.50 per 1000 feet (39a), and on January 9, 1951, the balance of the lumber in question was sold for approximately $68.00 per 1000 feet (41a). The contract price between the Plaintiff and the Defendant was $94.00 per 1000 feet.

The Defendant's contention in this case is that had it

consummated the contract for said lumber, it would have been a direct violation of the Federal statute cited as The Defense Production Act of 1950 and Inventory Regulations made pursuant thereto, having more particular reference to that part of the law which prohibits persons from hoarding or accumulating materials including inter alia lumber, specifically mentioned in the Regulations as scarce and critical materials. Defendant takes the position that acceptance of this order would have increased its inventory as much as 100% above its minimum workable inventory. This stand was not challenged by the Plaintiff, and, in fact, was substantiated by the finding of the Trial Court. Defendant, therefore, contends it had a legal right and was compelled to cancel the agreement made with Plaintiff, and, as a matter of fact, was obligated under the law so to do.

The case was brought to trial before the Honorable Thomas Bluett of the Court of Common Pleas of Philadelphia County, Pennsylvania, sitting without a jury. The Trial Judge found for the Defendant as a matter of law (120a) but thereafter a court en banc sustained exceptions thereto (134a) and entered judgment, notwithstanding the finding of the Trial Judge, for the Plaintiff below, the Respondent here; in the sum of $5446.85 (133a). Thereafter this judgment was affirmed by the Supreme Court of Pennsylvania.

Throughout the case the Petitioner has raised and has relied upon the provisions of the Defense Production Act of 1950 and the Inventory Control Rules and Regulations promulgated thereunder. Thus in the Answer to the Complaint the Petitioner specifically raised and relied upon the provisions of the said Act (8a, et seq.). Similarly Petitioner in its New Matter set forth at length and relied upon the provisions of the Federal Law (11a, et seq.). Repeatedly during the testimony before the Trial Judge the question of the force and effect of the Federal statutory provisions was raised (72a, 73a, 74a, 78a, 79a, 86a, 92a, 93a, 95a, 96a, 101a). The Trial Judge, in entering his original finding for

the Petitioner here, relied specifically and exclusively upon the fact that "the acceptance of the lumber in question by the Defendant would have been a violation of the Federal statute known as 'The Defense Production Act of 1950' and the Regulations thereunder, as the acceptance by the Defendant would have increased the Defendant's inventory of materials designated as scarce and critical to amounts from 50% to 100%, which would have been in defiance of the above mentioned Act and the Regulations pertaining thereto" (120a).

The court en banc in reversing the Trial Judge recognized the reliance that was placed upon the federal statute and regulations (128a) but concluded that the statute and the regulations were not applicable to the situation in the instant case (129a). The court en banc was of the opinion that the sale had been consummated and completed four days before NPA Regulation 1 was promulgated (130a).

The Supreme Court of Pennsylvania also recognized the fact that the Petitioner relied upon the provisions of NPA Regulation 1 promulgated pursuant to authority of the Defense Production Act of 1950 (370 Pa. 627, 628). The Supreme Court of Pennsylvania held, however, that the Petitioner had not made a prompt cancellation of its order as required by the NPA Regulation 1, and that the sale of the lumber in question had been consummated prior to the issuance of the regulation (370 Pa. 627, 628, 629).

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Pennsylvania erred:

1. In failing to hold that the Petitioner who acted in reliance upon and in accordance with NPA Regulation 1

and the Defense Production Act of 1950 was insulated from liability for failing to carry out a contract which if fulfilled would have caused Petitioner's inventory to exceed the limits allowed by Federal Statute.

2. In failing to render effective the protection against liability afforded by Section 707 of the Defense Production Act of 1950 to persons acting in compliance with NPA Regulation 1.

3. In holding that there was a duty on the Petitioner to reduce its inventory or to defer acceptance of delivery when Petitioner was seeking to act in compliance with NPA Regulation 1.

4. In affirming the judgment of the court en banc.

REASONS FOR GRANTING THE WRIT.

This case raises an important federal question regarding the compliance with and enforcement of the Defense Production Act of 1950. The net effect of this decision by the Pennsylvania Courts causes a most serious limitation upon the effectiveness of the Defense Production Act of 1950 and may fairly be said to subvert the end sought to be obtained by this emergency legislation. In the instant case a buyer who sought to adhere to the spirit and the letter of the federal law has been held liable in damages on its contract just as though the federal statutory provision did not exist. It is submitted that the unchallenged recognition of the Pennsylvania decision will cause persons to be fearful of complying with the requirements of the Defense Production Act and will enable sellers to continue trafficking in

strategic and scarce commodities and will render most doubtful the achievement of the objectives sought to be obtained by the federal legislation.

Insofar as research discloses the present case is the first of its kind which raises the interpretation of and the protection afforded by the Defense Production Act of 1950. Since it arose in a state court it is earnestly submitted that it is of even greater moment that your Honorable Court undertake to review the decision reached below so as to be able to announce rules and interpretations for the guidance of the Courts in applying and enforcing such an important piece of Federal Legislation.

The court en banc and the Supreme Court of Pennsylvania construed the words in the contract "F. O. B. Dock" to refer to the point of origin on the Pacific Coast rather than Philadelphia the point of arrival. Consequently it was held that the contract had been consummated and title had passed from the seller to the buyer before ever the lumber arrived in Philadelphia and thus at a point and time before the promulgation of NPA Regulation 1. Actually by resorting to this highly technical interpretation of the passage of title the state courts succeeded in avoiding the purposes of and the controls established by the Defense Production Act of 1950. The conclusion was reached that the lumber being purchased had become part of the Petitioner's inventory at a time when it was still part of a cargo on the high seas being shipped by the Respondent consigned to itself. By resort to this reasoning the Pennsylvania courts took this case away from the operation of the inventory controls established under the Defense Production Act of 1950.

Petitioner earnestly submits that the force and effect of such enormously important National Legislation should not be minimized or limited by such narrow technical interpretations of passage of title. Moreover the spirit of the legislation requires that buyers be able to act in accordance with the statute free from the fear that limited interpreta-

tions by state courts will ultimately result in the imposition of liability.

The questions presented are clearly of importance in the administration of the Act basic to the effort of the country to adjust itself and prepare itself in a time of most critical international relations.

CONCLUSION.

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

EDWIN P. ROME,
Attorney for Petitioner.

APPENDIX "A."

PUBLIC LAW 774—81st CONGRESS

CHAPTER 932—2d SESSION

H. R. 9176

Cited As

THE DEFENSE PRODUCTION ACT OF 1950.

TITLE I—PRIORITIES AND ALLOCATIONS

Sec. 101. The President is hereby authorized (1) to require that performance under contracts or orders (other

than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

Sec. 102. In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation. This section shall not be construed to limit the authority contained in section 101 of this Act.

Sec. 103. Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title or any rule, regulation, or order, thereunder, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

Sec. 704. The President may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this Act. Any regulation or order under this Act may be established in such form and manner, may contain such classifications and differentia-

tions, and may provide for su such adjustments and reason-
able exceptions as in the jud dgment of the President are
necessary or proper to effectu uate the purposes of this Act,
or to prevent circumvention o or evasion, or to facilitate en-
forcement of this Act, or any ru rule, regulation, or order issued
under this Act.

Sec. 707. No person shall b be held liable for damages or
penalties for any act or failur re to act resulting directly or
indirectly from his compliance ce with a rule, regulation, or
order issued pursuant to this is Act, notwithstanding that
any such rule, regulation, or o order shall thereafter be de-
clared by judicial or other cor ompetent authority to be in-
valid. No person shall discrim minate against orders or con-
tracts to which priority is assi signed or for which materials
or facilities are allocated under er title I of this Act or under
any rule, regulation, or order i issued thereunder, by charg-
ing higher prices or by imposi sing different terms and con-
ditions for such orders or cont ntracts than for other gener-
ally comparable orders or contr tracts, or in any other manner.

APPENDI DIX "B."

CHAPTER I—NATIONAL PR PRODUCTION AUTHORITY,
DEPARTMENT O OF COMMERCE

(NPA R Reg. 1)

PART 10—INVENT NTORY CONTROL

AUTHORITY: 10.1 to 10.16 6 Issued under sec. 704, Pub.
Law 774 81st Cong. Interpret et or apply sec. 101, Pub. Law

774, 81st Cong., sec. 101, E. O. 10161, Sept. 12, 1950, 15 F. R. 6105.

10.1 PURPOSE. The purpose of this part is to prevent the accumulation of excessive inventories of materials in short supply. It does this by limiting the quantities of such materials that can be ordered, received, or delivered.

10.2 MATERIALS COVERED. This part applies only to those materials listed in the attached Table I in the shapes and forms therein specified.

10.4 PRACTICABLE MINIMUM WORKING INVENTORY. As used in this part, the term "practicable minimum working inventory" means the smallest quantity of material from which a person can reasonably meet his deliveries or supply his services on the basis of his currently scheduled method and rate of operation. In the absence of unusual circumstances if the ratio of a person's inventory to his currently scheduled operations is substantially greater than the ratio which he found it necessary to maintain between inventory and operations during the recent past, his inventory will be considered excessive.

10.5 RESTRICTION ON RECEIPTS. (a) No person may receive or accept delivery of material listed in table I if his inventory of that material is, or by such receipt would become, more than a practicable minimum working inventory.

(b) In figuring his inventory, a person must include all such material in his possession or held for his account by others but not that held by him for the account of others. Material is considered to be in inventory until actually put into process or actually installed or assembled.

10.13 DEFENSE AGAINST CLAIMS FOR DAMAGES. Persons complying with this part are entitled to the protection afforded by section 707 of the Defense Production Act of 1950, which provides in part that "No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from his compliance with a rule, regulation, or order issued pursuant to this act, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid."